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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

WALDO ELIAS MERY
2105 Coddine Drive
Modesto CA 95350

Respiratory Care Practitioner License No. 5451

Respondent.

Case No. R-2069

OAH No. N2007060451

**DEFAULT DECISION
AND ORDER**

[Gov. Code §11520]

FINDINGS OF FACT

1. On or about April 5, 2007, Complainant Stephanie Nunez, in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs, filed Accusation No. R-2069 against Waldo Elias Mery (Respondent) before the Respiratory Care Board.

2. On or about June 28, 1985, the Respiratory Care Board (Board) issued Respiratory Care Practitioner License No. 5451 to Respondent. The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2008, unless renewed.

3. On or about April 5, 2007, Jennifer Porcalla, an employee of the Board, served by regular and certified mail, a copy of the Accusation No. R-2069, Statement to Respondent, Request for Discovery, Government code sections 11507.5, 11507.6 and 11507.7,

1 Notice of Defense form (two copies), to Respondent's address of record with the Board, which
2 was and is 2105 Coddine Drive, Modesto CA 95350. A copy of the Accusation, the related
3 documents, and Declaration of Service are attached as exhibit A, and are incorporated herein by
4 reference.

5 4. Service of the Accusation was effective as a matter of law under the
6 provisions of Government Code section 11505, subdivision (c).

7 5. On or about April 18, 2007, Respondent signed and returned a Notice of
8 Defense, requesting a hearing in this matter. A Notice of Hearing was served by mail at
9 Respondent's address of record and it informed him that an administrative hearing in this matter
10 was scheduled for September 6, 2007. Respondent failed to appear at that hearing. A copy of
11 Respondent's Notice of Defense, the Notice of Hearing, and Declaration of Service are attached
12 hereto as exhibit B, and are incorporated herein by reference.

13 6. Government Code section 11506 states, in pertinent part:

14 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
15 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
16 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
17 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

18 7. California Government Code section 11520 states, in pertinent part:

19 "(a) If the respondent either fails to file a notice of defense or to appear at the
20 hearing, the agency may take action based upon the respondent's express admissions or
21 upon other evidence and affidavits may be used as evidence without any notice to
22 respondent."

23 8. Pursuant to its authority under Government Code section 11520, the Board
24 finds Respondent is in default. The Board will take action without further hearing and, based on
25 Respondent's express admissions by way of default and the evidence before it, contained in
26 exhibits A, B and C, finds that the allegations in Accusation No. R-2069 are true.

27 9. The Respiratory Care Board further finds that pursuant to Business and
28 Professions Code section 3753.5, the costs of investigation and enforcement of the case prayed

1 for in the Accusation total \$1,691.75, based on the Certification of Costs contained in Exhibit F.

2 DETERMINATION OF ISSUES

3 1. Based on the foregoing findings of fact, Respondent Waldo Elias Mery has
4 subjected his Respiratory Care Practitioner License No. 5451 to discipline.

5 2. A copy of the Accusation and the related documents and Declaration of
6 Service are attached.

7 3. The agency has jurisdiction to adjudicate this case by default.

8 4. The Respiratory Care Board is authorized to revoke Respondent's
9 Respiratory Care Practitioner License based upon the following violations alleged in the
10 Accusation:

11 A. On January 10, 2007, respondent was convicted on his plea of guilty to
12 violating Vehicle Code section 23152(b) [driving with a blood alcohol level above .08%]
13 and Vehicle Code section 2800.1 [evading the police in a marked unit] in violation of
14 Business and Professions code sections 3750(d) and (g), 3752, CCR 1399.370(a) and (c).

15 B. As a matter in aggravation, respondent was issued a Public Letter of
16 Reprimand in case no. R-1149 based on his August 25, 1994 conviction for violating Vehicle
17 Code section 23152(a) [driving under the influence of alcohol.]

18 5. Respondent is hereby ordered to pay the above costs of investigation and
19 enforcement of this action.

20 ORDER

21 IT IS SO ORDERED that Respiratory Care Practitioner License No. 5451,
22 heretofore issued to Respondent Waldo Elias Mery, is revoked.

23 Respondent is ordered to reimburse the Respiratory Care Board the amount of
24 \$1,691.75 for its investigative and enforcement costs. The filing of bankruptcy by Respondent
25 shall not relieve Respondent of his responsibility to reimburse the Board for its costs.
26 Respondent's Respiratory Care Practitioner License may not be renewed or reinstated unless all
27 costs ordered under Business and Professions Code section 3753.5 have been paid.

28 Pursuant to Government Code section 11520, subdivision (c), Respondent may

1 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
2 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
3 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
4 statute.

5 This Decision shall become effective on November 24, 2007.

6 It is so ORDERED October 25, 2007

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8 Original signed by: _____

9 LARRY L. RENNER, BS, RRT, RCP, RPFT
10 PRESIDENT, RESPIRATORY CARE BOARD
11 DEPARTMENT OF CONSUMER AFFAIRS
12 STATE OF CALIFORNIA
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15 Attachments:

16 Exhibit A: Accusation No. R-2069, Related Documents, and Declaration of Service
17 Exhibit B: Notice of Defense, Notice of Hearing, and Declaration of Service
18 Exhibit C: Certified copy of Decision and Order in RCB Case R-1149
19 Exhibit D: Certified copy of Ripon Police Department report no. 06-2540
20 Exhibit E: Certified copy of court documents for January 10, 2007 conviction
21 Exhibit F: Certification of Costs: Declaration of Catherine E. Santillan
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